Supreme Court, U.S.
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No. 85-1487

IN THE

Supreme Court of the United States

OCTOBER TERM, 1985

HUGH M. MATCHETT,

Petitioner,

v.

CHICAGO COUNCIL OF LAWYERS, an Illinois corporation, GARY T. JOHNSON, SHARON BALDWIN, ELAINE E. BUCKLO, DOUGLASS W. CASSEL, JR., ELLEN C. CRAIG, JOHN POWERS CROWLEY, KEITH DAVIS, GEORGE F. GALLAND, JR., JAMES GEOCARIS, THOMAS H. GEOHEGAN, JEFFREY GILBERT, KAY S. GROSSMAN, ROBERT C. HOWARD, FRANCES KRASNOW, JUDSON H. MINER, ROGER PASCAL, ROBERT G. PERKINS, WILLIAM S. SINGER, RONALD STEVENS and JAMES D. WASCHER,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS

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QUESTIONS PRESENTED

I

Whether the State of Illinois by its judicial department, by a decision of its Appellate Court, has denied petitioner a remedy for a libel committed against him by the members of the board of managers of an unincorporated bar association while he was a candidate for the Republican nomination for judge of that court, and deprived him of his procedural rights and property without due process of law, and has denied him the protection and equal protection of the laws, in violation of his federal rights under the 14th Amendment § 1 to the Constitution of the United States, in dismissing his suit in chancery for discovery and other relief on the purported ground, refuted by the complaint, that he has failed to state a cause of action for libel by failing to allege constitutional malice as required by the

decisions of this Court, and for a purported want of jurisdiction to proceed in chancery, although discovery is a federal right in libel actions under the decisions of this Court, and under Illinois law, equity once having had jurisdiction of an original bill for discovery, the creation of a statutory remedy has not taken away equity jurisdiction, on the purported ground that he has an adequate remedy at law in the form of a purported cause of action for damages against all but not less than all the members of the defendant association, which is unlikely in view of the fact that all liability for an intentional joint tort is joint and several and no person is required to sue any tortfeasor he does not care to sue, but which, if true, would not be an adequate remedy by reason of the requirement that he must sue people he does not care to sue.

II

Whether the State of Illinois by its judicial department, by the action of the Supreme Court of Illinois in adopting rule 23 of the rules of that court dealing with the disposition of cases in the Appellate Court, which provides that: "In all cases disposed of by opinion, the opinion or opinions shall be published. All cases not required by the foregoing paragraph to be disposed of by opinion shall be disposed of by a written order which shall succinctly state the facts, the contentions of the parties, the reasons for the decision, the disposition, and the names of the participating judges. Orders are not precedential and will not be published. They may be invoked, however, to support contentions such as double jeopardy, res judicata, collateral estoppel, or the law of the case.", has adopted a void rule because it violates the 14th Amendment

§ 1 to the Constitution of the United States by depriving the litigants of their procedural rights and property without due process of law, and denying them the protection and equal protection of the laws, by undermining the integrity of the common law system of law itself, which is based on the doctrine of stare decisis, that every decision must be based on a precedent, and, in turn, must be followed as a precedent, the essence of due process of law and the protection and equal protection of the laws, without which there is no guarantee that ours is a government of law and not of men, that each judge is performing his duty to apply general law to particular instances, and is not acting as a depositary of arbitrary power, but a judge under the law.

III

Whether the State of Illinois by its judicial department, by the action of the Appellate Court in denying petitioner's petition for rehearing without passing on Question 2, the question under the Constitution of the United States that arose for the first time in and as a result of the action of the Appellate Court in designating its decision to be an order disposing of this case under Rule 23, which was properly formulated and argued therein, that being the first time and the logical time to bring the matter to the attention of the court, and the action of the Supreme Court of Illinois, in denying petitioner's petition for appeal as a matter of right under Article VI § 4(c) of the Constitution of Illinois, which was based on that question, which was properly formulated and argued therein, in compliance with Rule 317 of the

Rules of the Supreme Court of Illinois, although Article VI § 4(c) and Rule 317 are specific in stating that in such a case as this appeal lies as a matter of right from the Appellate Court to the Supreme Court, and the Rule provides the appeal should be taken by a petition for appeal as a matter of right, has denied petitioner a remedy for the libel committed against him aforesaid, and has deprived him of his procedural rights and property without due process of law, and has denied him the protection and equal protection of the laws, in violation of his federal rights under the 14th Amendment § 1.

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In The

SUPREME COURT OF THE UNITED STATES

October Term, A.D. 1985

HUGH M. MATCHETT,

Petitioner,

vs.

CHICAGO COUNCIL OF LAWYERS, an Illinois unincorporated bar association, GARY T. JOHNSON, SHARON BALDWIN, BLAINE E. BUCKLO, DOUGLASS W. CASSEL, JR., ELLEN C. CRAIG, JOHN POWERS CROWLEY, KEITH DAVIS, GEORGE F. GALLAND, JR., JAMES GEOCARIS, THOMAS H. GEOHEGAN, JEFFREY GILBERT, KAY S. GROSSMAN, ROBERT C. HOWARD, FRANCES KRASNOW, JUDSON H. MINER, ROGER PASCAL, ROBERT C. PERKINS, WILLIAM S. SINGER, RONALD STEVENS and JAMES D. WASCHER,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS

To The Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

HUGH M. MATCHETT, Petitioner, Pro Se, an

attorney, petitions the Court to issue a writ of certiorari to the Supreme Court of Illinois to review an order of that court entered on December 4th, 1985, denying a petition for appeal as a matter of right under Article VI § 4(c) of the Constitution of Illinois, and Rule 317 of the Rules of the Supreme Court Illinois, which it is our theory that court had no authority or jurisdiction to deny, to review a decision of the Appellate Court of Illinois, First Judicial District, Fourth Division, of July 18th, 1985, affirming a judgment of the Circuit Court of Cook County, Illinois, of May 29th, 1984, dismissing his complaint for libel and discovery and other relief on the court's own motion with prejudice and without costs. This petition is due to be filed by mail on or before March 4th, 1986.

OPINION BELOW

The Supreme Court of Illinois rendered no opinion. The Appellate Court entered an order disposing of this case under Rule 23 of the Supreme Court of Illinois, that is not precedential and will not be reported. It is set out in full in Appendix "A".

JURISDICTION

The jurisdiction of this Court is invoked under Title 28, U.S. Code, § 1257(3).

ILLINOIS CONSTITUTIONAL PROVISIONS AND RULES INVOLVED IN THIS CASE

The Illinois Constitution provides:

Article VI § 1: "The judicial power is vested in a Supreme Court, an Appellate Court and Circuit Courts.:

Article § VI § 4(c): "Appeals from the Appellate Court to the Supreme Court are a matter of right if a QUESTION under the

the Constitution of the United States or of this State arises for the first time in and as a result of the action of the Appellate Court."

Article VI, Section 6: "Appeals from final judgments of a Circuit Court are a matter of right to the Appellate Court in the Judicial District in which the ircuir Court is located."

Supreme Court of Illinois Rule 301 provides: "Every final judgment of a circuit court in a civil case is appealable as of right. The appeal is initiated by filing a notice of appeal. No other step is jurisdictional. A appeal is a continuation of the proceeding. All rights that could have been asserted by appeal or writ of error may be asserted by appeal. No formal exception need be taken in order to make any ruling or action of the court reviewable."

Supreme Court of Illinois Rule 315 provides: "(a) Petition for leave to Appeal: Grounds. A petition for leave to appeal to the Supreme Court from the Appellate Court may be filed by any party, including the State, in any case not appealable from the Appellate Court as a matter of right. Whether such a petition will be granted is a matter of sound judicial discretion."

Supreme Court of Illinois Rule 317 provides: "Appeals from the Appellate Court shall lie to the Supreme Court as a matter of right in cases in cases in which a question under the Constitution of the United States or of this State arises for the first time in and as a result of the action of the Appellate Court. The appeal shall be initiated by filing a petition in the form prescribed by Rule 315, except the petition shall be entitled 'Petition for appeal as a matter of right.' * * * When both appeal as a matter of

right and leave to appeal are sought, both requests will be disposed of by a single order. If the court allows the petition, briefs and abstracts in cases in which they are required, shall be filed as provided in the case of appeal by leave under Rule 315."

STATEMENT OF THE CASE

Petitioner is an attorney who was a candidate for the Republican nomination for judge of the Illinois Appellate Court. He filed his complaint for discovery and other relief on February 16th, 1983. He was born on April 24th, 1912 (P 2, R C 03). The defendants are the Chicago Council of Lawyers, an unincorporated bar association, and Gary T. Johnson, who was President during the period November 1st, 1981, to and including March 16th, 1982, and for a period of time after that date, and the other individual defendants were the members of the Board of Governors during the same period.

The facts stated by the court in its order are basically correct but they are not fairly written. He furnished a copy of the questionnaire he had furnished the Chicago Bar Association and a copy of a letter he had received from the President of the CBA, dated January 13th, 1982 (Exhibit "B", R C 16) which the Court says was a finding that he was "Not Recommended." The letter shows the prejudice it had in favor of the the bar associations. The letter reads:

"Dear Mr. Matchett:

> "I am informed that our Chicago Bar Association's Committee On Evaluation Of Candidates has completed its investigation and evaluation of your application for the office of Judge of the Appellate Court.
>
> "I regret to advise you that the Committee has concluded that you do not meet its established criteria for this important office, by reason of age, and, therefore, found you 'Not Recommended'.
>
> "Your cooperation with the Committee is most appreciated.
>
> "Sincerely,"

This letter was written in compliance with the rule that in addition to the vote on the question as to each candidate, each member was required to evaluate the candidate as to the Criteria provided for in the rules, and "In the case of a finding of Not Recommended, the commuication [to the candidate] shall be accompanied by a statement of the reasons for the finding." The rules are incorporated verbatum in paragraph 7 of the complaint.. In other words, in petitioner's opinion, he met all the CBA's criteria except age.

On March 16th, 1982, the Chicago Council of Lawyers said that petitioner was "Not Qualified": "Mr. Matchett lacks the capacity to be a judge of the Illinois Appellate Court.", and the result was reported in the Chicago press.

The statement that: "HUGH M. MATCHETT: Not Qualified. Mr. Matchett lacks the capacity to be a judge of the Illinois Appellate Court." is the basis of his complaint for libel. He alleges it is a false statement-, libelous per se, made with actual malice on the part of the defendants, in that they knew the statements were false, having no reasonable ground for believing them to be true, or having made the same in reckless disregard of whether they were false or true, made and published by them for the purpose of affecting plaintiff's return as a candidate at the election, to his detriment, and in favor of his opposing candidate, to plaintiff's damage in his professional reputation as an attorney, with presumed financial loss, and to his reputation in general (P 13, R C 09: P13, R C 28).

should be clarified in regard to a libel plaintiff's right to discovery, since this Court has held that proof of "actual malice" calls a defendant's state of mind into question in a constitutional malice case.

It is also fair to state that something should be done in regard to the situation that has arisen in Illinois during the period 1970 to 1986 in regard to a litigant's right to appeal from an adverse ruling in the Appellate Court when a question under the Constitution of the United States arises for the first time in and as a result of the action of the Appellate Court. The right of review under such circumstances is a federal constitutional right conferred on him by the constitution of this state, and should be treated as such.

The attitude of the Appellate Court in regard to its jurisdiction over members is strange.

2 Bouvier's Law Dictionary, Rawle's Third Revision 1914, pages 1706-1707, states: "Joint Tortfeasors. Wrongdoers; two or more who commit a tort. When several persons join in an offence or injury, they may generally be sued jointly, or any number less than the whole may be sued, or each one may be sued separately; Williams v. Sheldon, 10 Wend. (N.Y.) 654. Each is liable for himself, because the entire damages sustained were occasioned by each, each sanctioning the acts of the others, so that by suing one alone, he is not charged beyond his just proportion. Any number less than the whole may be sued, because each is answerable for his companion's acts. This a joint action may be brought against several for an assault and battery, or for composing and publishing a libel;".

Let it be assumed for a moment that the courts have obtained no jurisdiction over the Chicago Council of Lawyers, nevertheless, it

has obtained jurisdiction over the individual defendants who have been served with summons, who are individually liable for the joint and several tort each of them has committed. The plaintiff is not required to sue the association and the members and the members of the board of manages of the association. He has a right to sue each of them individually, and that he has done, and entitled to do, as a matter of state and federal constitutional right.

STATEMENT OF THE REASONS WHY THIS PETITION SHOULD BE GRANTED BY THIS COURT

A defamatory statement may consist of a statement in the form of an opinion, and a statement of this nature is actionable if it implies that the allegations of undisclosed defamatory facts as the basis for the opinion. Matchett v. Chicago Bar Ass'n, 1984, 125 Ill. App. 3d 1004 at 1010; Howell v. Blecharczyck, 1983, 119 Ill. App. 3d 987, 993.

The words: "Mr. Matchett lacks the capacity to be a judge of the Illinois Appellate Court." is a defamatory statement in the form of an opinion, and it is actionable because it implies the allegation of undisclosed defama-famatory facts as the basis of the opinion. Matchett v. Chicago Bar Ass'n, 1984, 125 Ill. App. 3d 1004 at 1010. If the facts are unknown the opinion necessarily implies the existence of facts which would support it in the judgmnt of the person whose opinion is expressed or the person to whom he expresses it. What in

What in form, therefore, is an expression of opinion or judgment is actually, in such a case, an imputation of fact, i.e., facts which would make the opinion a reasonable interpretation thereof.

In 1964 this Court laid down the federal rule that prohibits a candidate from recovering damages for a defamatory falsehood relating to him as a candidate unless he proves that the statement was made with "actual malice' --- that is, with knowledge that it was false or with reckless disregard of whether it was false or not< Petitioner has made the necessary allegations in the complaint, and the conclusion can readily be drawn that it is a fact. New York Times v. Sullivan, 1964, 376 U.S. 254, supports this complaint.

The decision of this Court in Herbert v Lando, 441 U<S< 153 (1979), and Hutchison v. Proxmire, 1979, 443 U.S. 111, at page 120,

CONCLUSION

For the reasons stated, Petitioner believes that this Court should grant this petition to decide the federal questions herein set forth, for the benefit of the general public and parties to constitutional malice cases, to clarify the law in regard to pleading and proof of actual malice, and to settle the right to and extent of discovery in such cases. This Court should also grant the petition and hold that Rule 23 of the Rules of the Supreme Court of Illinois is unconstitutional for the reasons urged in this petition, and to require the Supreme Court of Illinois to answer questions in regard to its behavior in regard to compliance with Article VI § 4(c) of the Constitution of the State of Illinois.

Respectfully submitted,

Hugh M. Matchett

HUGH M. MATCHETT

APPENDIX A

FOURTH DIVISION
July 18, 1985

NOTICE The text of this opinion may be changed or corrected prior to the time for filing of a Petition for Rehearing or the disposition of the same.

NO. 84-1892

IN THE APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

HUGH M. MATCHETT, Plaintiff-Appellant, vs. CHICAGO COUNCIL OF LAWYERS, an Illinois corporation, GARY T. JOHNSON, SHARON BALDWIN, ELAINE E. BUCKLO, DOUGLASS W. CASSEL, JR., ELLEN C. CRAIG, JOHN POWERS CROWLEY, KEITH DAVIS, GEORGE F. GALLAND, JR., JAMES GEOCARIS, THOMAS H. GEOGHEGAN, JEFFREY GILBERT, KAY S. GROSSMAN, ROBERT C. HOWARD, FRANCES KRASNOW, JUDSON H. MINER, ROGER PASCAL, ROBERT C. PERKINS, WILLIAM S. SINGER, RONALD STEVENS, and JAMES D. WASHER, Defendants-Appellees.	) APPEAL) FROM THE) CIRCUIT) COURT OF) COOK) COUNTY.)))))))))) HONORABLE) HAROLD A.) SIEGAN,) PRESIDING)

ORDER DISPOSING OF APPEAL
UNDER SUPREME COURT RULE 23

Plaintiff, a former judicial candidate, appeals from the trial court's dismissal of

his libel complaint. Plaintiff seeks damages and other relief from the Chicago Council of Lawyers, an unincorporated association, on the ground that he was libeled by the Council's evaluation of him as lacking "the capacity to be a judge of the Illinois Appellate Court." The relief requested by plaintiff included compensatory and punitive damages, injunctive relief, and a declaratory judgment.

Finding that an unincorporated association cannot be sued in its own name without joining of all members as parties, we affirm the decision of the trial court dismissing with prejudice plaintiff's complaint.

Background:

Defendant Chicago Council of Lawyers (COUNCIL) is an unincorporated association, having as one of its primary purposes the evaluation of candidates running for judicial

office in the March 1982 primary, inviting each to complete questionnaires, furnish additional information, and schedule personal interviews to assist the Council in evaluating the candidates' qualifications. The letter suggested that if the candidate had already completed the evaluation form used by the Chicago Bar Association (CBA), a copy of which would suffice.

In response to the Council's letter, plaintiff judicial candidate Hugh M. Matchett, furnished the Council with a copy of the completed questionnaire he had submitted to the CBA as well as a copy of the letter he had received from the CBA dated January 13, 1982, in which the CBA had found him "Not Recommended". Plaintiff also furnished additional information to the Council. Subsequently, he was interviewed by two Council attorneys at defendant's offices.

Based on the personal interviews it conducted and on information provided by the candidates and by members of the bench and bar who had experience with the candidates, the Council on February 16, 1982 issued its Report on Candidates for the Judicial Primary Election. After setting forth the criteria used in making its evaluations and emphasizing the particularly high standards against which candidates for the appellate court were evaluated, the Council reported its evaluation of plaintiff as follows:

> "Hugh M. Matchett: Not Qualified
>
> Mr. Matchett lacks the capacity to be a judge of the Illinois Appellate Court."

On February 16, 1983, plaintiff brought suit against the Council, alleging that its evaluation of him and the resultant publication of said evaluation constituted libel per se. In his complaint, plaintiff named as defen-

dant the Council and 22 members thereof. Only eight of those individual members were served, and it is these eight members who are appellees in the instant case.

In his complaint, plaintiff prayed for "recovery of a reasonable judgment for damages, and for a reasonable judgment for punitive damages" for the damages to his professional and individual reputation; for a declaratory judgment as to the truth of the allegations of the complaint; and for injunctive relief "to bar a repetition by the defendants identical or similar to their conduct complainrd of."

Defendants, those members of the Council properly served, moved to dismiss, and plaintiff moved to amend his complaint. A hearing on both motions was set for May 25, 1984. Plaintiff failed to appear at the scheduled hearing. The trial court, noting in its order

that plaintiff's similar libel action against the CBA was dismissed for failure to state a claim and that that order was subsequently affirmed by the appellate court (Matchett vs. Chicago Bar Association (1984), 125 Ill.App. 3d 1004, 467 N.E.2d 271), granted defendants' motion and dismissed with prejudice plaintiff's complaint.

Plaintiff subsequently moved to vacate the order of dismissal, and to amend his complaint. That motion was denied. Plaintiff now appeals from the trial court's orders, granting defendants' motion to dismiss and denying plaintiff's motion to vacate the dismissal.

Opinion

The issue confronting this reviewing court is the propriety of the dismissal of plaintiff's complaint. The trial court granted defendants' motion to dismiss based on plaintiff's failure to state a claim. We find, how-

ever, that a more fundamental basis for dismissal exists, one which obviates our need to determine the sufficiency of plaintiff's complaint.

Prior to January 1, 1984, the common law rule in Illinois was that a voluntary unincorporated association could not sue or be sued in its own name; and, that if an action was to be brought against the association, it was necessary that all members be joined as parties. (American Federation of Technical Engineers, Local 144 vs. La Jeunesse (1976), 63 Ill.2d 263, 347 N.E.2d 712.) Because an unincorporated association has no separate legal existence independent of the members who compose it, each member of the association must be named as a party in a suit brought by or against the association. Pierce vs. Chester Johnson Electric Co. (1983), 117 Ill.App.3d 867, 454 N.E.2d 55.

As defendants note in their brief, at the time the instant suit was brought in February 1983, the Council was an unincorporated association. Plaintiff admits this fact. Defendants further point out, after setting forth the applicable law stated above, that plaintiff has failed to join all members of the Council as parties and has in fact only served eight individual members, the appellees in the instant case.

The settled common law rule prohibiting a voluntary association from suing or being sued in its own name without joining all members as parties applies to actions at law. (American Federation of Technical Engineers, Local 144 vs. La Jeunesse (1976), 63 Ill.2d 263, 347 Ill.2d 263, 347 N.E.2d 712.) Suits in equity against voluntary unincorporated associations have been sustained where service was had upon some representative of the group who could be shown to represent the body of the member-

ship. Illinois Power Co. vs. Latham (1973), 15 Ill. App.3d 156, 303 N.E.2d 448.

The instant suit was brought in the Chancery Division of the circuit court of Cook County. In his complaint, plaintiff requested both damages and equitable relief, in the form of a declaratory judgment and an injunction. It is therefore imperative for this reviewing court to determine whether the present action is one at law, over which the circuit court lacked jurisdiction under the common law rule barring such suits by or against a voluntary unincorporated association, or one in equity, against which no such bar exists.

The nature of the relief sought and the issues involved, rather than the title which the pleading bears, determines the legal significance of the pleadings. (South Side Trust & Savings Bank of Peoria vs. South Side Trust & Savings Bank of Peoria (1972), 5 Ill.App.3d

474, 284 N.E.2d 61.) In Brucato vs. Edgar (1984), 128 Ill.App.3d 260, 470 N.E.2d 615, plaintiff, who sought equitable relief in the form of an injunction, as well as damages, punitive damages, and an accounting, argued that the common law rule prohibiting suit against an unincorporated association in an action at law was inapplicable to his case because it was an action for equitable relief. The court found that no grounds existed for the issuance of an injunction and that the ordering of an accounting would be merely incidental to a finding that plaintiff was entitled to money damages. Consequently, the Brucato court concluded that the action was, in substance, an action at law over which the circuit court lacked jurisdiction under the common law rule barring such suits by or against a voluntary unincorporated association. 128 Ill.App.3d 260, 470 N.E.2d 615.

In the instant suit, plaintiff seeks equitable relief in the form of an injunction; damages and punitive damages for injury to his professional and individual reputation; and, a declaratory judgment. Initially, we note it is settled law that unless a plaintiff can establish the existence of one kind of a very limited number of exceptions, equity will not enjoin the publication of a libel, so strong are the constitutional guarantees of freedom of speech and of the press. (Matchett vs. Chicago Bar Association (1984), 125 Ill. App.3d 1004, 467 N.E.2d 271.) Moreover, equity will not retain jurisdiction of a cause and grant equitable relief where the pleading shows on its face that the complainant has an adequate remedy at law and has failed to allege facts giving equitable jurisdiction. (Bezely vs. Searl (1923), 230 Ill.App. 393.) Here, plaintiff's remedy lies in damages. He has failed to allege in his complaint the ne-

cessity to enjoin the Council from repeating its evaluation of him as a candidate for the 1982 election or the likelihood that such a repetition is threatened. Any future comments or publication by the Council as to plaintiff's qualifications for office are likely stem not from a republication of the 1982 evaluation but from a new investigation and evaluation. We therefore find that plaintiff's request for injunctive relief was not such as to render the present action equitable in nature. Brucato vs. Edgar (1894), 128 Ill.App.3d 260, 470 N.E.2d 615.

Plaintiff also requested a declaratory judgment as to the truth of the allegations in his complaint. A declaratory judgment action is neither legal nor equitable but is sui generis and depends on the issues involved and the relief sought. (Vermillion County Good Government League, Inc. vs. Smith (1965), 64 Ill.App.2d 270, 211 N.E.2d 391.) Here, the is-

sue involved is whether an evaluation by the Council, unlikely to be repeated, so damaged plaintiff in his profession or in the performance of the duties of his office as to constitute libel per se. If plaintiff can prove he has been damaged, the relief warranted and properly sought is at law. The issue involved and the relief properly sought in the instant case lend to the declaratory relief here requested legal rather than equitable characteristics.

Accordingly, we find, as did the court in Brucato vs. Edgar (1984), 128 Ill.App.3d 260, 470 N.E.2d 615, that the instant action is, in substance, one at law such that the common law rule barring such suits against a voluntary unincorporated association is applicable.

We note that the common law was changed by statute when the General Assembly enacted section 2-209.1 of the Code of Civil Procedure,

effective January 1, 1984. (Ill.Ann.Stat., ch. 110, par. 2-209.1 (Smith-Hurd Supp. 1984) .) However, the instant action was instituted prior to the effective date of that statute, and this court has found section 2-209.1 not to be retroactive. Brucato vs. Edgar (1984), 128 Ill.pp.3d 260, 470 N.E.2d 615.

The trial court, in its order of August 2, 1984, found the decision of the appellate court in Matchett vs. Chicago Bar Association (1984), 125 Ill.App.3d 1004, 467 N.E.2d 271, to be dispositive of the instant case. In Matchett, plaintiff brought a suit alleging libel against the CBA on the basis of an unelaborated rating of "Not Recommended." The court there, after reviewing the standard against which publications concerning public officials or public figures are to be judged, found that a qualified privilege of publication exists and that such privilege is abused only if the speaker does not believe the truth of the de-

famatory matter, or has no reasonable grounds for believing it to be true. (125 Ill.App.3d 1004, 467 N.E.2d 271.) The court went on to find that the plaintiff, by his bare conclusory allegations of malice without supporting facts, had failed to overcome such privilege. Based on this reasoning, the trial court dismissed with prejudice plaintiff's complaint.

The trial court has discretion to allow the amendment of pleadings or to finally terminate litigation, and the refusal of the trial court to allow amendment is reversible error only if there is an abuse of discretion. (Able vs. Pure Oil Co. (1972), 8 Ill.App.3d 558, 290 N.E.2d 331.) It is proper to dismiss a complaint and refuse leave to amend when it is apparent that no cause of action can be stated. People ex rel. Council 19 of American Federation of State, County and Municipal Employees AFL-CIO, by Brotcher vs. Egan (1977), 52 Ill.App.3d 1042, 368 N.E.2d 481.

After revieving Matchett vs. Chicago Bar Association (1984), 125 Ill.App.3d 1004, 467 N.E.2d 271, and the precedent upon which it relied, we find that the trial court's decision, finding Matchett to be dispositive and dismissing with prejudice plaintiff's complaint based thereon, was not an abuse of discretion such as to constitute reversible error.

For the foregoing reasons, the decision of the trial court, dismissing with prejudice plaintiff's complaint, is affirmed.

DATED AT CHICAGO, ILLINOIS THIS 18th DAY OF JULY 1985.

ENTER: Justice David Linn
Presiding Justice Mel R. Jiganti
Justice Glenn T. Johnson